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No. 83-533

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JERRY K. NICHOLSON,

Petitioner,

v.

INTERSTATE COMMERCE COMMISSION AND
UNITED STATES OF AMERICA;
LOUISIANA SOYBEAN ASSOCIATION; AND
MISSOURI PACIFIC RAILROAD COMPANY;

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF OF LOUISIANA SOYBEAN ASSOCIATION IN SUPPORT OF PETITION

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Respondent, Louisiana Soybean Association ("Association"), respectfully urges this Court to issue a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit, as requested in the September 28, 1983, petition filed by Jerry K. Nicholson ("Nicholson").[1] In supporting Nicholson's petition for a writ of certiorari, Louisiana Soybean Association relies upon and adopts by reference the explanation and reason-

[1] This filing is made in accordance with Rule 19.6 of the Rules of this Court.

ing expressed therein (including the question presented, the statement of jurisdiction, the statement of the case, and the reasons for granting the writ). The Association shall provide herein a supplementary statement, in support of its position that this Court should grant certiorari because a matter of national importance is involved.

Louisiana Soybean Association is a nonprofit association of soybean growers, dedicated to the promotion of the production and marketing of soybeans in the State of Louisiana.[2] The Association's membership base is broad; at the present time there are over 550 members, representing more than one-half million acres of farmland under cultivation. The outcome of the case at bar is of vital interest to the Association because the sizable railroad classification yard proposed by Missouri Pacific Railroad Company ("Missouri Pacific") is to be built on farmland used to grow soybeans as well as other crops.[3] If the railroad facility is completed as planned, the land on which it is built no longer will be usable for soybean production purposes.

In addition to issuing a writ of certiorari for the reasons stated in Nicholson's petition, the Court should issue said writ because this case affects a matter of national importance—the preservation of the nation's farmlands. The conversion of productive farmlands to nonagricultural uses has been a serious national problem, as the Congress has recognized. Thus, in enacting the Farmland

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[2] There are no parent companies, subsidiaries or affiliates of the Association (*see* Rule 28.1).

[3] Accordingly, Louisiana Soybean Association requested (but was denied) leave to intervene in the Interstate Commerce Commission proceeding (*see Nicholson* v. *Missouri Pacific R.R.*, 366 I.C.C. 69 n. 2 (1982)), and intervened in the review proceeding at the court of appeals.

Protection Policy Act, 95 Stat. 1341 (1981), codified at 7 U.S.C. §§ 4201 *et seq.* (1982), the Congress found both the existence of the problem and the need for Federal agencies to take corrective measures where possible:

(a) Congress finds that—

(1) the Nation's farmland is *a unique natural resource* and provides food and fiber necessary for the continued welfare of the people of the United States;

(2) each year, *a large amount of the Nation's farmland is irrevocably converted from actual or potential agricultural use to nonagricultural use;*

(3) continued decrease in the Nation's farmland base *may threaten the ability of the United States to produce food and fiber in sufficient quantities* to meet domestic needs and the demands of our export markets;

(4) the extensive use of farmland for nonagricultural purposes *undermines the economic base of many rural areas;*

(5) Federal actions, in many cases, result in the conversion of farmland to nonagricultural uses where alternative actions would be preferred;

(6) the Department of Agriculture is the agency primarily responsible for the implementation of Federal policy with respect to United States farmland, assuring the maintenance of the agricultural production capacity of the United States, and has the personnel and other resources needed to implement national farmland protection policy; and

(7) the Department of Agriculture and other Federal agencies *should take steps to assure that the actions of the Federal Government do not cause United States farmland to be irreversibly converted to nonagricultural uses in cases in which other national interests do not override the importance of the*

> *protection of farmland nor otherwise outweigh the benefits of maintaining farmland resources.*

7 U.S.C. § 4201(a) (emphasis added).

Even if the action of the Interstate Commerce Commission ("ICC") in disclaiming jurisdiction over Missouri Pacific's railroad yard construction technically is not subject to the proscriptions and prophylactic measures of the Farmland Protection Policy Act, the existence of a Congressionally-recognized farmlands problem is a strong reason for the Court to grant certiorari. Construction of the classification yard necessarily will result in farmland reduction in Louisiana, an area of the country (the South) where industrialization and resulting farmland conversion are acute.

The ICC should have exercised jurisdiction over Missouri Pacific's railroad yard construction (*see* Nicholson's Petition for a Writ of Certiorari) and considered the destruction of productive farmland in its "public convenience and necessity" evaluation under 49 U.S.C. § 10901(a) (Supp. V 1981).[4] That evaluation involves the balancing of a wide variety of factors. *See Texas & Pacific Ry. Abandonment*, 363 I.C.C. 666, 676-77 (1980).[5]

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[4] In seeking intervention below, Louisiana Soybean Association urged the ICC to take evidence on this subject. The Association has not taken a position on whether, after all pertinent factors are considered, "the public convenience and necessity requires or permits" the construction of the Missouri Pacific Railroad classification yard, within the meaning of 49 U.S.C. § 10901(a).

[5] "There is no specification of the considerations by which the Commission is to be governed" in making a public convenience and necessity determination. *Chesapeake & O. Ry.* v. *United States*, 283 U.S. 35, 42 (1931). The scope of the ICC's authority in making that determination is broad. *Burke-Parsons-Bowlby Corp.* v. *United States*, 268 F.Supp. 203, 205 (S.D.W.Va.), *aff'd per curiam*, 389 U.S. 426 (1967).

Additionally, the "public convenience and necessity" terminology "import[s] inclusion of the 'general public' as contrasted with any specific individual." *Nebraska ex rel. Nebraska State Ry. Comm'n* v. *United States*, 255 F.Supp. 718, 722 (D. Neb. 1966). Moreover, national interests—not just the interests of an immediate locality and/or population—may be considered. *See ICC* v. *Railway Labor Executives Ass'n*, 315 U.S. 373, 377 (1942). This broad scope of the "public convenience and necessity" phrase includes the destruction of farmland in Louisiana that will result when Missouri Pacific's railroad classification yard is built.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the referenced petition for a writ of certiorari, the Court should issue said writ.

Respectfully submitted,

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